Supreme Court, U.S.
FILED
DEC 12 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-810

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JOHN DOE, A MINOR, BY AND THROUGH HIS PARENT AND NEXT FRIEND, MARY DOE,
Petitioner,

v.

SUMNER COUNTY BOARD OF EDUCATION.
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. If a court reviews a hearing officer's decision pursuant to 20 U.S.C. section 1415(e)(2) and determines that the hearing officer improperly dismissed the complaint on a procedural issue, must the court remand the case to the hearing officer for further decision where, in the original decision, the hearing officer failed to make findings and render a decision on the substantive issues?

2. Does a court possess jurisdiction pursuant to 20 U.S.C. section 1415(e) to consider the substantive propriety of an individualized education program if the propriety of that program has not been the subject of an administrative hearing?

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STATUTE INVOLVED

The statute here involved, 20 U.S.C. section 1415 (1982 & Supp. V 1988), provides in pertinent part:

> **(a) Establishment and maintenance.** Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this part shall establish and maintain procedures in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.
>
> **(b) Required procedures; hearing.** (1) The procedures required by this section shall include, but shall not be limited to —
>
> . . . .
>
> (E) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.
>
> (2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State educational agency or by the local educational agency or intermediate educational unit, as determined

by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

(c) Review of local decision by State educational agency. If the hearing required in paragraph (2) of subsection (b) of this section is conducted by a local educational agency or an intermediate educational unit, any party aggrieved by the findings and decision rendered in such a hearing may appeal to the State educational agency which shall conduct an impartial review of such hearing. The officer conducting such review shall make an independent decision upon completion of such review.

. . . .

(e) Civil action; jurisdiction. (1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) of this section shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (c) and paragraph (2) of this subsection. A decision made under subsection (c) shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Any party aggrieved by the findings and decision made under subsection (b) of this section who does not have the right to an appeal under subsection (c) of this section,

and any party aggrieved by the findings and decision under subsection (c) of this section, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

. . . .

(f) **Effect on other laws.** Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, title V of the Rehabilitation Act of 1973, or other Federal statutes protecting the rights of handicapped children and youth, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsection (b)(2) and (c) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

STATEMENT OF CASE

Petitioner, John Doe, meets the eligibility requirements for the receipt of special education and related services pursuant to the Education for All Handicapped Children Act, 20 U.S.C. section 1401 *et seq.* ("EAHCA"). During the 1985-86 school year, Plaintiff attended the school system governed by the Respondent, Sumner County Board of Education.

On April 25, 1986, a multidisciplinary team ("M-Team") convened to develop Petitioner's individualized education program ("IEP") for the 1986-87 school year as required by the EAHCA. Petitioner's mother attended the M-Team meeting with her lawyer. At that meeting, Respondent's representatives attempted to explain the special education programs which Respondent could offer to Petitioner. Petitioner's mother, however, refused to consider the high school's program, stating that she was not there "to investigate the possibility of high school . . .it was [not] appropriate." Petitioner's mother instead demanded that the M-Team develop an IEP for Petitioner placing him in the Brehm School, a private residential placement facility in Carbondale, Illinois. When the M-Team refused Petitioner's mother's request, Petitioner's lawyer abruptly terminated the meeting, stating that he intended to "test the limits of the law."

On May 22, 1986, Petitioner filed an action in the United States District Court for the Middle District of Tennessee, alleging that Respondent had failed to provide him with an appropriate education as required by the EAHCA. Respondent moved to dismiss that action for failure to exhaust administrative remedies,

and the district court dismissed, without prejudice, Petitioner's claims relating to the 1986-87 school year.

Thereafter, Petitioner's parents unilaterally placed Petitioner in the Brehm School for the 1986-87 school year at a first-year cost of $18,425.05. Petitioner then requested an administrative hearing pursuant to 20 U.S.C. section 1415(b)(2). The issues presented for determination at that administrative hearing were whether the Respondent should reimburse Petitioner for the Brehm School tuition for the 1986-87 school year and whether Respondent should be ordered to pay for the placement of Petitioner at the Brehm School in the future. In March of 1987, an administrative hearing convened to consider evidence on these issues.

By order dated April 9, 1987, the hearing officer found Petitioner's claim for reimbursement for the private school tuition to be barred because Petitioner unilaterally enrolled in the private school and bypassed the M-Team and the due process hearing procedures. With regard to the future placement of Petitioner at the private residential school, the hearing officer determined that issue was not ripe for decision. Noting that Respondent had not been given an opportunity to propose an IEP, the hearing officer concluded that it was impossible to determine whether Respondent was capable of providing an appropriate education for Petitioner. Finally, the hearing officer suggested that an M-Team meeting be held to determine the educational and related services that Respondent could provide for the forthcoming year.

On May 28, 1987, an M-Team convened, and Respondent proposed an IEP for the 1987-88 school year, which Petitioner's mother rejected. Petitioner's

mother did not, however, request a due process hearing on the adequacy of the proposed IEP. Instead, on June 12, 1987, Petitioner filed a supplemental complaint in the action previously initiated on May 22, 1986, in the United States District Court. Once again, Respondent moved to dismiss the complaint for failure to exhaust administrative remedies.

On September 28, 1987, the district court heard evidence presented by the parties, and on March 11, 1988, the district court issued its memorandum opinion. In that opinion, the court found that the hearing officer erred in dismissing Petitioner's complaint on the procedural issue, noting that this determination was plainly erroneous in light of the Supreme Court's opinion in *School Committee v. Department of Education*, 471 U.S. 359 (1985). Next, despite the fact that the hearing officer had rendered no decision whatsoever on the substantive issue (the ability of the school system to provide an appropriate education to Petitioner), the district court concluded, based solely upon the Petitioner's test scores, that Petitioner had not progressed while attending Respondent's school system and that the school system therefore had failed to provide an appropriate education. In addition, on the basis of the Petitioner's test scores following his enrollment at the Brehm School, the court determined that the private school was the least restrictive environment in which Petitioner could receive an appropriate education. Accordingly, the district court ordered Respondent to reimburse Petitioner for the costs of attending the Brehm School and ordered Respondent to pay the future tuition for that school.

Respondent appealed the district court's decision to the United States Court of Appeals for the Sixth

Circuit. In an opinion entered July 13, 1989, the court of appeals reversed the order of the district court and remanded the case for further proceedings consistent with that opinion. The court of appeals determined that the district court correctly held that by unilaterally placing Petitioner in a private school, Petitioner did not waive his right to seek reimbursement under the EAHCA. In addition, the court held that the hearing officer incorrectly determined that he could not decide whether the proposed IEP for the 1986-87 school year was in compliance with the EAHCA. The court of appeals held that the district court should have remanded the case to the hearing officer for a decision on the substantive issues and ordered the case remanded for that purpose.

In its decision, the court noted the teachings of the Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982) that a court, when reviewing a decision of a hearing officer in a case pursuant to the EAHCA, is not to substitute its own notions of sound educational policy for those of the school authorities and that the court is instead to give "due weight" to the administrative decision. *Doe ex rel. Doe v. Smith*, 879 F.2d 1340, 1343 (6th Cir. 1989). In addition, the court of appeals noted that remand to the hearing officer for a decision on the substantive issue would further the purposes of the EAHCA by allowing the state to apply its expertise in an area of its expertise. *Id.* Finally, the court of appeals held that for a reviewing court to accord "due weight" to state administrative proceedings, the court must accommodate the procedures contemplated by the EAHCA so that an administrative decision is present for review. *Id.* at 1344.

Next, the court held that the substantive propriety of the proposed IEP for the 1987-88 school year should have been addressed at a due process hearing before being addressed by the court. *Id.* The court of appeals concluded that Petitioner was required to request a due process hearing instead of going directly to district court; therefore, the district court erred in considering the 1987-88 IEP. *Id.* Finally, the court of appeals specifically declined to decide whether the district court correctly determined that Respondent failed to provide Petitioner with an appropriate education. *Id.* The court of appeals remanded the case to the district court with instructions that the court return the case to the hearing officer for a decision. *Id.*

The court of appeals denied Petitioner's Petition for Rehearing on August 10, 1989. On November 14, 1989, this Court received the Petition for Writ of Certiorari.

REASONS FOR DENIAL OF THE WRIT

Introduction

The United States Court of Appeals for the Sixth Circuit held that, because the hearing officer made no decision on the substantive issue in this case, the district judge should have remanded Petitioner's complaint once he determined that the hearing officer's decision on the procedural issue was improper. The court of appeals based its holding upon the requirement, set forth by this Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982), that the courts, when reviewing a hearing officer's decision pursuant to the Education for All Handicapped Children Act, give "due weight" to that decision. The Sixth Circuit's

holding is consistent with the plain language of the EAHCA and the holding of this Court in *Rowley*.

The court of appeals also held that the district court's consideration of the appropriateness of the IEP for the 1987-88 school year was improper because that IEP had never been the subject of a due process hearing pursuant to the requirement of 20 U.S.C. section 1415(b). As the court of appeals held, such consideration by the hearing officer is mandated by the jurisdiction provisions of the EAHCA, 20 U.S.C. section 1415(e)(2).

Argument

A. THE SIXTH CIRCUIT COURT OF APPEALS ACTED CONSISTENTLY WITH THE PLAIN LANGUAGE OF 20 U.S.C. SECTION 1415 BY ORDERING THIS CASE REMANDED TO THE ADMINISTRATIVE HEARING OFFICER FOR A DECISION ON THE SUBSTANTIVE ISSUES.

The court of appeals reversed the district court's decision and ordered this matter remanded on two independent grounds. First, the hearing officer failed to render a decision on the substantive issue of whether the proposed 1986-87 IEP complied with the EAHCA. Second, the proposed 1987-88 IEP had not been the subject of the due process hearing required by 20 U.S.C. section 1415(b) and therefore could not be considered by the court. Neither ground conflicts with the language or intent of the EAHCA.

Subsection (b) of 20 U.S.C. section 1415 discusses the availability of a due process hearing to the parent of a handicapped child who disagrees with the school system's decisions and who, therefore, files a complaint. Subsection (e) of section 1415 discusses the

process for appeal from the administrative level to the courts. Neither subsection prohibits, or even discusses, the remand of a case from the court to the hearing officer when the hearing officer fails, for whatever reason, to render a decision on the substantive merits of the case. Thus, the decision of the court of appeals does not conflict with the "plain language" of the EAHCA. To the contrary, the plain language of the statute clearly evidences the requirement that the court have an administrative decision to review. *See, e.g.*, 20 U.S.C. § 1415(b) (1982) ("*Required* Procedures; hearing"); 20 U.S.C. § 1415(e)(2) (1982) ("the court *shall receive* the records of the administrative proceedings").

Moreover, although Congress considered the issue of remand from the reviewing court to the administrative officer prior to the enactment of the EAHCA, that consideration centered upon remand to consider additional evidence. The House version of the EAHCA due process provisions provided that the findings of fact made by the administrative hearing officer were to be considered conclusive if supported by "substantial evidence." S. Conf. Rep. No. 455, 94th Cong., 1st Sess., 47-48, *reprinted in* 1975 U.S. Code Cong. & Admin. News 1480, 1501. The House version then provided that the courts "may remand the case to the state agency to take additional evidence." *Id.* at 48, 1975 U.S. Code Cong. & Admin. News at 1501. The House thus recognized that the due process hearings contemplated by the EAHCA were to be speedy, informal procedures, creating a strong likelihood that, following the hearing, the parties might obtain additional evidence which should be considered. The standard for review contained in the House version

necessitated remand for consideration of that additional evidence by the hearing officer.

The Senate version of the EAHCA due process provisions, now codified as 20 U.S.C. section 1415, contained a different standard of review. That version permits the reviewing courts to hear additional evidence at the request of any party. 20 U.S.C. § 1415(e)(2) (1982). The statute then directs the reviewing court to render, based upon the preponderance of the evidence, appropriate relief. *Id.* This version obviated the need for remand if a party desired to present additional evidence, because the reviewing court can receive additional evidence.

Thus, the discussion in the legislative history regarding remand was limited to the method for consideration of additional evidence. Remand where the administrative hearing officer has not rendered a decision on *any* substantive issue does not conflict with the legislative history of the EAHCA.

B. THE DECISION OF THE COURT OF APPEALS APPLIES THE DECISIONS OF THIS COURT IN PREVIOUS EAHCA CASES.

In *Board of Education v. Rowley*, 458 U.S. 176 (1982), this Court, discussing the role of a court reviewing an appeal of an administrative decision pursuant to the EAHCA, noted that the EAHCA directs the reviewing court to make an independent decision based upon the preponderance of the evidence and then to grant appropriate relief. *Id.* at 206. That provision of the law is "by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Id.* The Court noted that, under the EAHCA, the state and local educational

authorities possess the primary responsibility for choosing appropriate educational programs. *Id.* at 207. That fact, the Court concluded, when combined with the statutory pronouncement that the reviewing court "shall receive the records of the administrative proceedings," places an obligation upon the reviewing court to give "due weight" to the administrative proceedings. *Id.* at 206. That principle makes sense, as courts lack the specialized knowledge and experience necessary to determine the appropriate program for a handicapped child. *Id.* at 208.

In this case, the district court did not have the benefit of a decision by an administrative fact finder on any substantive issue. Therefore, the district court could not give "due weight" to the administrative proceedings. The district court, contrary to this Court's admonition in *Rowley*, imposed its own view of preferable educational methods. The court of appeals, recognizing the dangers inherent in the district court's action, properly reversed that decision and properly held that the district court erred by considering and ruling upon the proposed 1987-88 IEP.

No administrative hearing officer ever considered the proposed 1987-88 IEP because Petitioner never requested an administrative hearing concerning that IEP. Instead, Petitioner sought to circumvent the administrative scheme by going directly to court. The court of appeals properly found that Petitioner's action violated the exhaustion of remedies requirement and that the district court erred by ruling upon the substantive merits of the 1987-88 IEP.

As this Court noted in *Smith v. Robinson*, 468 U.S. 992, 1013 (1984), when Congress enacted EAHCA, it

conceived a vehicle perceived to be the most effective for protecting the rights of handicapped children to a public education. "Allowing a plaintiff to circumvent the [EAHCA] administrative remedies would be inconsistent with Congress' carefully tailored scheme." *Id.* at 1012. That administrative procedure consists of a complaint to the school system, an administrative hearing, a decision by the hearing officer and then an appeal to the court. 20 U.S.C. § 1415 (1982 & Supp. V 1988). In this case, Petitioner circumvented that process by going directly to the court.

Although this Court recognized, in *Honig v. Doe*, 484 U.S. 305, 327 (1988), an exception to the requirement that the EAHCA administrative procedure be exhausted, that exception is limited to cases in which the use of administrative procedures would be futile or inadequate to protect the claimant's rights. *See Smith v. Robinson*, 468 U.S. at 1014 n.17; *Christopher W. v. Portsmouth School Comm.*, 877 F.2d 1089 (1st Cir. 1989); *Crocker v. Tennessee Secondary School Athletic Ass'n*, 873 F.2d 933, 935-36 (6th Cir. 1989) (collecting cases). In this case, Petitioner has not made, and cannot make, a showing of futility or of inadequate relief justifying the bypassing of administrative procedures.

None of Respondent's actions indicate that a request for a due process hearing on the 1987-88 IEP would be denied. Respondent had never denied Petitioner access to the due process remedies. Moreover, Petitioner would not have been irreparably harmed by resort to the administrative process. In fact, the Department of Education regulations promulgated pursuant to EAHCA require that the hearing officer render a final decision within forty-five

(45) days of the request for a hearing. 34 C.F.R. § 300.512(a) (1988). An appeal, if any, from that decision could have been consolidated with the appeal from the first due process hearing before trial. Thus, the convening of a due process hearing would not have delayed the ultimate resolution of the issues herein. EAHCA, as interpreted by this Court in *Honig v. Doe* and *Smith v. Robinson*, requires that Petitioner resort to and exhaust his administrative remedies.

Finally, remand is consistent with this Court's decision in *School Committee v. Department of Education*, 471 U.S. 359 (1985). In that case, this Court noted the direction of the EAHCA to the reviewing court to "grant such relief as [it] determines to be appropriate" confers broad discretion upon the reviewing court. *Id.* at 369. That direction and the opinion of this Court therein presuppose that the case is properly before the reviewing court following an administrative hearing. In this case, the matter was not properly before the reviewing court.

C. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH THE DECISIONS OF OTHER CIRCUIT COURTS OF APPEALS.

In *Dubois v. Connecticut State Board of Education*, 727 F.2d 44 (2d Cir. 1984), a district court dismissed the plaintiffs' complaint for failure to exhaust administrative remedies. In that case, the plaintiffs had received a due process hearing and the hearing officer had rendered findings of fact. Based upon those findings, the hearing officer determined that there was not enough evidence to conclude that plaintiff was handicapped and entitled to special education services. *Id.* at 47. On appeal, the district court termed the administrative record "incomplete" because of the ab-

sence of evaluative data and dismissed the case "for failure to exhaust administrative remedies." *Id.* at 48. The court of appeals reversed that dismissal, holding that the lack of evaluative data in the record was relevant to the merits of the appeal, not to whether the plaintiffs had exhausted their administrative remedies. *Id.* at 49.

In *Dubois*, the plaintiff received an administrative hearing, and the hearing officer rendered a definitive and final decision on the merits of the claim. The plaintiff had, in fact, exhausted his administrative remedies. In the present case, the 1987-88 IEP has never been the subject of a due process hearing. And, in the present case, the hearing officer did not render any decision on the merits. Thus, the instant case is distinguishable from *Dubois*.

Likewise, the instant case is distinguishable from *Muth v. Central Bucks School Dist.*, 839 F.2d 113 (3d Cir. 1988) *rev'd on other grounds sub nom. Dellmuth v. Muth*, 109 S. Ct. 2397 (1989). In *Muth*, the court addressed the propriety of a two-tier administrative review process in which the state educational agency conducted the initial hearing and the secretary of the state educational agency reviewed the hearing officer's decision. *Id.* at 122. The court concluded that the secretary's involvement violated the guarantee of "impartial review" and therefore violated EAHCA. *Id.* at 124.

In addition, the court in dictum noted that the internal administrative remand process utilized by the secretary violated the requirements of section 300.512 of the Code of Federal Regulations, which guarantees a final administrative decision no later than seventy-five days from the date of the receipt of the request

for a due process hearing. *Id.* at 124-25. In *Muth*, more than one (1) year elapsed between the convening of the initial hearing and the final appealable decision because the secretary remanded the case to the hearing officer. *Id.* The court noted that such internal administrative remand was inconsistent with the goal of prompt resolution of disputes. *Id.*

In the instant case, the 1987-88 IEP has not been the subject of any administrative hearing. Furthermore, problems with remand within the administrative review process are not present. First, Tennessee has no such two-tier review system. Second, the remand on the 1986-87 IEP issue would not violate the guarantee of a final decision appealable to the court. Remand in this case would properly be limited to a decision on the merits of the claim, a decision to which the court could attach "due weight." Because the hearing officer has already heard the evidence, the time between remand and entry of a decision on the merits should be quite short. Finally, remand would, as noted earlier, satisfy the EAHCA requirement, as described in *Rowley*, that the educational decisions be left to the state. *Board of Educ. v. Rowley*, 458 U.S. at 207.

Finally, *DeVries ex rel. DeBlaay v. Spillane*, 853 F.2d 264 (4th Cir. 1988), is distinguishable from the instant case because in *Devries*, the hearing officer actually rendered a decision on the merits. The plaintiff challenged the school system's failure to place her child at his neighborhood school. She requested and received a due process hearing on that issue, and the hearing officer concluded that placement at a school other than the neighborhood school was appropriate. *Id.* at 265. The state reviewing officer af-

firmed that decision, and the plaintiff sought review by the courts. *Id.* During the pendency of the appeal, the school proposed a new IEP, placing the plaintiff at another school, but not the neighborhood school. *Id.* Without requesting a due process hearing, the plaintiff asked the court to review the new IEP at trial. The district court dismissed the action on the ground that the new IEP had not been the subject of an administrative appeal. *Id.* The court of appeals held that the dismissal of the action was improper because the same issue had been the subject of a decision on the merits by the administrative tribunal in the first case. *Id.* at 267.

In the instant case, however, even assuming that the issues are the same, the first administrative hearing did not result in a decision on the merits. Thus, remand is appropriate.

E. THE DECISION OF THE COURT OF APPEALS IS CONSISTENT WITH THE SPIRIT AND INTENT OF THE EAHCA.

As noted throughout this brief, the court of appeals in effect rendered two opinions. First, where an administrative hearing officer improperly dismisses an EAHCA case on procedural grounds, without rendering an opinion on the merits, the reviewing court must remand the case to the hearing officer for a decision on the substantive issues. The court of appeals thus limited its opinion to those few instances where the hearing officer does not render a decision on the merits.

Secondly, the court of appeals held that EAHCA required remand where an IEP had not been the subject of a due process hearing. That holding is consistent with the spirit and intent of the EAHCA. The

fact that the same issue is before a reviewing court on a prior administrative decision does not render an administrative hearing on the second IEP futile. The court maintains the power to render "appropriate" relief with regard to the decision it reviews. Meanwhile, exhaustion implements the EAHCA and appears sensible particularly for those years in which changed circumstances exist. *Andersen ex rel. Andersen v. District of Columbia*, 877 F.2d 1018 (D.C. Cir. 1989).

Contrary to Petitioner's assertions, remand under these circumstances will not significantly delay the proceedings. In the first instance, obtaining a decision on the substantive merits of the case should not require much delay. The hearing officer has already received the evidence, is familiar with the case, and should render a decision promptly. In the second instance, a hearing and final decision must be received within forty-five (45) days of the complaint. If the parties desire to appeal that decision, that appeal can be consolidated with the appeal of the first hearing. Indeed, the instant case and the opinion following remand in *DeVries ex rel. DeBlaay v. Spillane*, 853 F.2d 264 (4th Cir. 1988), styled *DeVries ex rel. DeBlaay v. Fairfax County School Bd.*, 882 F.2d 876 (4th Cir. 1989), evidence the feasibility of such consolidation. In this case, consolidation of the trial clearly was possible, while in *DeVries*, consolidation actually occurred. Thus, the decision of the court of appeals should not significantly delay the proceedings. *See also Town of Burlington v. Department of Educ.*, 736 F.2d 773, 794 (1st Cir. 1984), *aff'd on other grounds sub nom. School Comm. v. Department of Educ.*, 471 U.S. 359 (1985).

Conclusion

The decision of the court of appeals is consistent with the plain language of the EAHCA. It does not conflict with the decisions of this Court or of other circuit courts. In addition, the decision of the court of appeals should not cause confusion or unreasonable delay.

Finally, the decision of the court of appeals is consistent with the spirit and intent of the EAHCA. Those goals are that parents and school officials work together in developing a program for the child; that if the parents and school are unable to agree upon a program, then an expeditious appeal process be available; and that the courts not impose their views as to the educational program but instead defer that decision to the experts—the state and local education agencies. The court of appeals decision furthers each of these goals.

In light of the foregoing, Respondent submits that this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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